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July 29, 1994

**VIA HAND DELIVERY**

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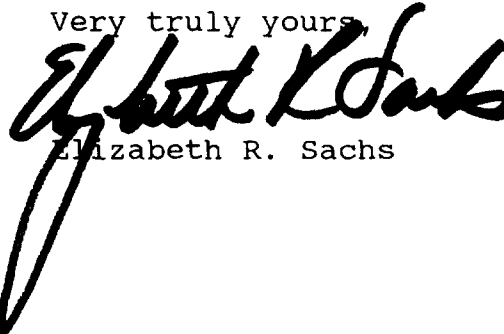
Re: GN DOCKET NO. 93-252  
OPPOSITION TO EMERGENCY PETITION TO DISMISS  
COMMENTS AND REPLY COMMENTS OF THE  
**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Opposition to Petition in the above-referenced proceeding.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,



Elizabeth R. Sachs

ERS:cls

Enclosure

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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JUL 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 ) GN Docket No. 93-252  
**Implementation of Sections** )  
**3(n) and 332 of the** )  
**Communications Act** )  
 )  
**Regulatory Treatment of** )  
**Mobile Services** )

To: The Commission

**OPPOSITION TO EMERGENCY PETITION TO DISMISS  
COMMENTS AND REPLY COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.45(a) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. § 1.45(a), hereby opposes the July 21, 1994 Emergency Petition to Dismiss Comments and Reply Comments of the American Mobile Telecommunications Association, Inc. ("Petition") filed by Range Corporation d/b/a/ Range Telecommunications ("Range" or "Petitioner"). The Petition seeks Commission involvement in the internal deliberations of a fully qualified participant in the instant proceeding. AMTA requests that the Petition be dismissed expeditiously, and that the FCC consider fully the Association's Comments and Reply Comments in this proceeding.

## I. DISCUSSION

The instant Petition demands that the FCC "reject and dismiss" the Comments and Reply Comments filed by AMTA in the above-entitled proceeding. Range further asserts that the Commission must state explicitly that the Association's pleadings will not be considered in the agency's decision-making process relating to this matter. These demands are not premised on a failure to file within the requisite time period or on any other procedural defect. Rather, Range claims that the Association's filings were ultra vires, and offers a laundry list of alleged matters relating to the Association's internal processes which it claims supports that assertion.

AMTA denies Range's assertion unequivocally. The Association hereby reaffirms that it complied with all relevant provisions of its By-laws in reaching the positions advanced in its filings. However, even if it had not, FCC approval of the relief requested by Range would be unprecedented.<sup>1/</sup>

The Commission is not the appropriate forum for determinations of intra-organizational disputes such as that raised by Range. Resolution of such matters would require the Commission to examine the bona fides of the process associated with every filing submitted to it by every corporation, partnership, association or other legal entity which is a party to any FCC proceeding. The Petitioner's Request is even more extraordinary in the context of a Notice and Comment Rule Making Proceeding in which all interested parties are invited to participate. AMTA urges the Commission to dismiss

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<sup>1/</sup> See, e.g., InterCast, Inc., 28 Rad. Reg. 2d (P&F) 367, (Rev. Bd. 1973). Broadcasting Corp., 18 Rad. Reg. 2d (P&F) 63 (Rev. Bd. 1970).

or deny at its earliest convenience this transparent effort by Range to have expunged from the FCC's record the pleadings of a major trade association which espouses a position on one aspect of this proceeding which is contrary to the Petitioner's.

Range's assertions that Nextel and Motorola are "monopolists" and that AMTA "has now become [their] pawn" (Pet. 2, 6) are inflammatory and irresponsible. Mergers and acquisitions in the SMR industry, as in other industries, are subject to § 7 of the Clayton Act, which prohibits such transactions if their effect "may be to substantially lessen competition, or tend to create a monopoly." 15 U.S.C. § 18 (1988). The Department of Justice and the Federal Trade Commission are the federal agencies responsible for enforcing the Clayton Act. In addition, private parties may bring actions alleging violations of § 7. There has been no determination by a court or the responsible federal agencies that any of the transactions proposed by Nextel or Motorola may "substantially lessen competition," let alone a determination that Nextel and Motorola are monopolists.

Furthermore, AMTA is not a "pawn" of Nextel or Motorola, just as it is not a pawn of Range or any of its other individual members. AMTA's position is the product of an internal deliberative process. Although Range is unhappy with the outcome of the process in this case, it does not follow that the process is invalid.

Although the Commission is not the appropriate body to consider Range's accusations, we nevertheless respond to them briefly. First, Range falsely asserts (Pet. 5) that "AMTA give written assurances to its members that AMTA had been, and would continue to be, neutral on" the Nextel proposal. That accusation is belied by the very

document cited by Range, which expressly stated that AMTA would include a wide-area licensing proposal in its reply comments if AMTA's Digital Council reached consensus and the proposal was approved by the Board of Directors. See July 6, 1994, Memorandum from Alan Shark and Jill Lyon to AMTA members, p. 2.

Second, Range's reckless assertion (Pet. 8) that "at least twelve (12) of the members of the current Board of Directors of AMTA" are affiliated with Nextel or Motorola is simply false.<sup>2/</sup> In the few instances in which AMTA members represented on the Board of Directors have merged or become affiliated, the acquired party or non-surviving merged party has been removed from the Board. In some instances, if the removed Director remains eligible to hold a Board seat by virtue of other retained authorizations, the Board has appointed that party to fill an empty Board position in accordance with the By-Laws.

Third, the Board of Directors waived the seven-day deliberation period in this case because the Commission allowed only fourteen (14) days for the filing of reply comments, and it was not feasible to reach consensus within seven (7) days.

Range disagrees with AMTA's position described in its Reply Comments regarding the retuning of co-channel systems to create a clear band of contiguous spectrum for wide-area 800 MHz Specialized Mobile Radio ("SMR") licensees.<sup>3/</sup> Range

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<sup>2/</sup> The Association is particularly disturbed by the numerous factual errors in Range's allegations as to the purported "affiliations" of various Board members, and by its totally irrelevant and gratuitously invasive comments on the personal activities of individual Directors.

<sup>3/</sup> This is the only AMTA position with which Range claims to disagree, or which  
(continued...)

is, of course, free to oppose that position to the best of its ability. It has apparently done so in conjunction with similarly minded entities.<sup>4/</sup> The FCC now will examine the record in its entirety to ascertain where the public interest lies and make its decisions accordingly.

The Association recognizes that individual members will not always agree on how best to approach complex regulatory issues. This is not an uncommon occurrence in a dynamic industry, such as wireless communications, wherein individual entities sometimes elect to pursue varying technical and marketing approaches which cause them to support different regulatory plans. To the extent that these positions are considered incompatible, some parties may no longer feel that their interests are adequately represented by a particular association. The remedy is to withdraw from membership and seek representation elsewhere, not to cast specious, factually inaccurate aspersions on the actions of the organization in an effort to manipulate the agency's record in the proceeding.

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<sup>3/</sup>(...continued)

Range alleges to be the product of an ultra vires act. Since AMTA took no position on this subject in its Comments, it is unclear on what legal theory Range relies in its request to have the Association's Comments stricken from the proceeding.

<sup>4/</sup> In fact, it is AMTA's understanding that Range has organized and collected monies to fund a lobbying group to promote what it perceives to be its interests in these matters. AMTA appreciates that the visibility which could be generated by Range's submission of the instant Petition may assist its marketing efforts.

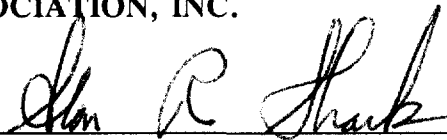
## II. CONCLUSION

AMTA's Comments and Reply Comments in this proceeding were adopted pursuant to all appropriate Association procedures. Range's Petition should be dismissed as an improper effort to embroil the agency in intra-organizational matters that are beyond the scope of the agency's interest.

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.**

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July 29, 1994

## **CERTIFICATE OF SERVICE**

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 29th day of July, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Opposition to Range Petition the following:

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